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November 3, 1994

BY HAND

Mr. William F. Caton,
Acting Secretary,
Federal Communications Commission,
1919 M Street, N.W.,
Washington, D.C. 20554.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Ex Parte Presentation
PP Docket No. 93-252

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

On behalf of NationsBank and NationsBanc Capital Markets, Inc., and pursuant to section 1.1206(a)(2) of the Commission's Rules, this letter constitutes notice that Ellen B. Macht, Director, Corporate Finance, NationsBanc Capital Markets, W. Hutchinson McClendon, IV, Vice President, Communications Finance Division, NationsBank, William Jennings B. Dorn, Jr., Vice President, NationsBank, and the undersigned met with the following to discuss issues in the Commission's PCS Competitive Bidding rulemaking proceeding: on November 2 -- Commissioner James H. Quello and Rudolfo M. Baca, Legal Advisor to Commissioner Quello; Lisa B. Smith, Legal Advisor to Commissioner Andrew C. Barrett; Dr. Robert M. Pepper, Chief, Office of Plans and Policy, Andrew E. Sinwell, Policy Associate, Office of Plans and Policy, and Jay D. Markley, Policy Associate, Wireless Communications Bureau; on November 3 -- Commissioner Susan Ness, Ruth Milkman, Legal Advisor to Chairman Reed E. Hundt; Sarah Seidman, Special Assistant to the General Counsel; Commissioner Rachelle Chong and Jill Lockett, Senior Advisor to Commissioner Chong. During their meetings, the representatives of NationsBank and NationsBanc Capital Markets made the following points:

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The most significant barrier to entry into PCS by designated entities is financing. In fashioning its auction rules, the Commission recognized that designated entities generally do not have ready access to capital and that the cost of capital for designated entities is high. See Fifth Report and Order in PP Docket No. 93-253, FCC 94-111 (July 15, 1994) ("Fifth Report & Order"), at ¶¶ 97-110. Although the Commission has provided incentives for passive equity investment in designated entities, designated entities will need debt financing to pay for licenses and build out PCS systems. Under the current rules, commercial banks will be reluctant to lend to designated entities, driving up the cost of capital even more. Even at higher rates, such financing may not be sufficient to pay for the system build out, and higher interest payments will competitively disadvantage designated entities in the PCS marketplace.

The following measures would help attract capital, particular lower cost bank financing, and reduce the cost of such capital:

- a. Allow lenders to take security interests in PCS licenses.
- b. Establish a procedure for the sale of a license of an entrepreneurial business in the event the business encounters financial distress. Typically, bank loans provide for two types of financial default, after the occurrence of which the bank is entitled to accelerate the loan and force the borrower to restructure (either in bankruptcy or through a voluntary "workout"). The two types of default are the violation of financial covenants (a "covenant default") and the non-payment of interest or principal (a "payment default"). The occurrence of a covenant default is a very good sign that a borrower is in financial distress and needs to take action to improve its financial position, such as a sale of a portion of its business in order to reduce its debt. The occurrence of a payment default indicates that the business is in extreme financial difficulty and probably indicates that a complete liquidation or sale of the borrower is necessary. Requiring that the license be sold only to another designated entity after the occurrence of a default is unacceptable to banks. Banks would, however, probably accept a requirement that after the occurrence of a default the license must first be offered to designated entities before it may be sold to a non-designated entity. Therefore, we suggest that 47 C.F.R.

§ 24.839(d) be amended by adding a subparagraph (5). Subparagraph (5) should except from the requirement that a license owned by a designated entity be sold only to another designated entity during the five-year holding period, a sale where the owner has committed a significant default under its loan agreement and the license is first offered to designated entities only for a specified period of time but such offer does not result in a significant transaction that permits the remedying of all defaults or the repayment of its defaulted debt.

c. Allow designated entities to benefit from the credit standing of large potential users of the system or the system manager by entering into long-term resale or capacity arrangements or long-term management contracts with them without triggering attribution or transfers of control.

d. Clarify that termination of the license will not be a remedy of the U.S. Government in the event the license owner defaults in its obligations under its installment purchase obligation. The license would remain part of the assets to be sold in a reorganization or workout, and the U.S. Government would be a party to an intercreditor agreement with other creditors and be treated the same as any other senior lender.

e. Allow tax benefits through vehicles such as leverage leasing without triggering attribution or transfers of control.

An original and one copy of this letter are being submitted to the Secretary to include in the above-

Mr. William F. Caton

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referenced file. Should any questions arise in connection with this notice, please do not hesitate to contact the undersigned.

Respectfully submitted,

By Patricia Diaz Dennis
Patricia Diaz Dennis
Ari Q. Fitzgerald

Attorneys for NationsBank and
NationsBanc Capital Markets, Inc.

cc: The Honorable James H. Quello
The Honorable Rachelle Chong
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Lisa B. Smith, Attorney-at-Law
Dr. Robert M. Pepper
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Jay D. Markley
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